SBCivil Writ Petition No.2039/2003

Gulab Singh Nepali
Vs.
State of Rajasthan & Ors.

Date of Order :: 16th October, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. V.K.Mathur, for the petitioner.
Mr. Ravi Bhansali, for the respondents.

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By this petition for writ a challenge is give to the legality, validity and propriety of the order dated 31.8.2000 passed by the Secretary, Krishi Upaj Mandi Samiti, Udaipur. By the order aforesaid the Secretary, Krishi Upaj Mandi Samiti, Udaipur ordered for re-fixation of the petitioner from regular pay scale and ordered for recovery of an amount in a tune of Rs.1,19,984/- being said to be paid in excess during the period commencing from 5.10.1986 to 31.8.2000.

The facts necessary for adjudication of present petition for writ are that the petitioner was employed with Agriculture Marketing Board, Jaipur at Krishi Upaj Mandi Samiti, Udaipur on 21.5.1983 as a casual workman. He was retrenched from service w.e.f. 6.10.1986 and that was subject matter of an industrial dispute raised by the workman. The Labour Court,

Udaipur by its award dated 4.1.1995 declared retrenchment of the petitioner illegal and ordered for his reinstatement in service with 50% of total back wages. In pursuant to the award dated 4.1.1995 the Secretary, Krishi Upaj Mandi Samiti, Udaipur under an order dated 3.9.1996 reinstated the petitioner in Class-IV cadre w.e.f. 6.10.1986 in pay scale of Rs.700-865. After reinstatement the petitioner continued with the respondent employer as Class-IV employee in regular pay scale prescribed for the post concerned. After a lapse of about four years from the date of reinstatement the Secretary, Krishi Upaj Mandi Samiti, Udaipur passed the order impugned dated 31.8.2000 stating therein that the petitioner workman was erroneously reinstated in regular pay scale w.e.f. 3.10.1986 and, therefore, a recovery in a tune of Rs.1,19,984/- was ordered to be effected from the petitioner. Hence this petition for writ is preferred.

It is contended by counsel for the petitioner while giving challenge to the order impugned that the petitioner was working as Class-IV employee and, therefore, there was no illegality in allowing him the pay scale prescribed for that post otherwise the same shall be in violation of Article 14 read with Article 39-B of the Constitution of India. It is further contended that the recovery ordered to be made in pursuant to the order dated 31.8.2000 deserves to be quashed as the regular pay scale was allowed to the

petitioner without any misrepresentation at his part. The respondents at their own made fixation of the petitioner's pay in regular pay scale, therefore, even if it is assumed that fixation of the pay in regular pay scale was erroneous, no order or recovery could be passed.

In reply to the writ petition it is contended that the petitioner at the time of retrenchment on 6.10.1986 was working on daily rate basis, therefore, on his reinstatement in service he was entitled for daily wages but due to some error regular pay scale was allowed to him and to rectify such error the amount paid in excess is required to be recovered.

Heard counsel for the parties.

By the order dated 3.9.1996 the petitioner was reinstated w.e.f. 6.10.1986 in the pay scale of Rs.700-865 and 50% of total back wages was also determined by the respondents by permitting fixation of the petitioner's pay in the pay scale referred above. The respondents continued the petitioner in regular pay scale and only by order impugned dated 31.8.2000 recovery of the amount said to be paid in excess was sought to be effected. The respondents no where in their reply stated that the petitioner claimed for regular pay scale or the regular pay scale under the order dated 3.9.1996 was given to him on

basis of his representation. The respondents if at their own allowed regular pay scale to the petitioner then there is no occasion to effect recovery of the amount said to be paid in excess as there was no misrepresentation or fraud on part of the workman. The order impugned dated 31.8.2000, therefore, is apparently illegal and the same deserves to be quashed.

Quite half-heartedly it is also contended by counsel for the respondents that the petitioner is not a citizen of India and, therefore, he is having no right to invoke extra ordinary jurisdiction of this Court. I do not find any merit in the contention so raised as the petitioner is alleging violation of Article 14 of the Constitution of India while giving challenge to the order impugned and the protection under Article 14 of the Constitution of India is available to every person irrespective of his citizenship. Article 226 of the Constitution of India empowers this Court to issue prerogative writs, orders or directions to any person or authority or any government within its territorial jurisdiction for enforcement of the rights conferred by Part-III of the Constitution of India or for any other purpose. The petitioner may be the resident of Nepal but he is claiming protection under Article 14 of the Constitution of India, therefore, this writ petition is certainly maintainable.

It is also contended by counsel for the petitioner that the petitioner as a matter of fact could not have availed remedy under the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act of 1947") being a citizen of Nepal. This contention is also of no consequence. The Act of 1947 defines "employer" and "workman" and does not make any distinction among employer and the workman on basis of their citizenship. The Act of 1947 is having application in entire country and, therefore, all the employer and the workman to whom the Act of 1947 is having application irrespective of their citizenship have protection under the Act aforesaid.

In view of whatever discussed above, this petition for writ deserves acceptance. The same, therefore, is allowed. The order impugned dated 31.8.2000 passed by the Secretary, Krishi Upaj Mandi Samiti, Udaipur is quashed.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.